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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
10/680,183	10/08/2003	Brian Kabbes	033570-001	5399	
21839	7590 01/27/2004		EXAMINER		
	DANE SWECKER & M CE BOX 1404	PARA, ANNETTE H			
	RIA, VA 22313-1404	ART UNIT	PAPER NUMBER		
			1661		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary		Appli	cation No.	Applicant(s)				
			30,183	KABBES, BRIAN				
Office Action Summary			niner	Art Unit				
The MAILING DATE of this communication app		_	tte H. Para	1661				
Period fo	or Reply	inicauon appears oi	n the cover sheet v	vith the correspondence add	ress			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailling date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  Status								
1)	Responsive to communication(s) f	led on						
2a)⊠	This action is <b>FINAL</b> .	2b) ☐ This action	is non-final.					
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims								
4)⊠ Claim(s) <u>1</u> is/are pending in the application.								
4a) Of the above claim(s) is/are withdrawn from consideration.								
5) Claim(s) is/are allowed.								
•	6)⊠ Claim(s) <u>1</u> is/are rejected.							
	Claim(s) is/are objected to.	inting and/ou -1ti						
8) Claim(s) are subject to restriction and/or election requirement.								
	on Papers							
9) The specification is objected to by the Examiner.								
10)[_]	The drawing(s) filed on is/ard			· ·				
	Applicant may not request that any obj		· ·	, ,	2 4 424(4)			
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.								
Priority under 35 U.S.C. §§ 119 and 120								
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).								
<ul> <li>a) All b) Some * c) None of: <ul> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No.</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul> </li> <li>13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.</li> <li>37 CFR 1.78.</li> <li>a) The translation of the foreign language provisional application has been received.</li> <li>14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.</li> </ul>								
Torondo was included in the first sentence of the specification of in an Application Data Sheet. 37 CFR 1.78.								
Attachment	• •							
2) Notice	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review ( nation Disclosure Statement(s) (PTO-1449)			Summary (PTO-413) Paper No(s). Informal Patent Application (PTO-				

## **DETAILED ACTION**

## Objection to the Disclosure 37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

## 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163 (a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

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- A. Applicant should describe how the new variety differs from its parents and related (similar) cultivars. Correction is required.
- B. Applicant must provide the description of the phyllaries such as length, width, texture, and color. Correction is required.
- C. Applicants should supplement the general color descriptions currently set forth with color designations from the employed color chart, for such characteristic botanical features as ray florets, disc floret, peduncle, inflorescence buds, reproduction organs, foliage (upper and lower surface), fruits, and seeds. See MPEP § 1605. Applicant should also provide the size of the seeds. Correction is required.
- D. Applicant must provide the description of the flowering stem such as length, texture, and diameter. Correction is required.
- E. Applicant must provide the description of the foliage such as arrangement, length, width, apex, base, margin, texture, veins, upper and lower surface color of young and mature foliage, and venation color. Correction is required.
- F. Applicant must provide the length, diameter and color of the petiole. Correction is required.
- G. Applicant must provide the description of the inflorescence buds such as the shape, height, diameter, and color. Correction is required.
- H. Applicants must provide the description of the ray florets' shape, length, width, corolla tube length, apex, base, texture, the number of ray florets per inflorescence and their color. Correction is required.

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I. Applicants must provide the description of the disc florets' shape, length, width, apex, base, the number of disc florets per inflorescence and their color. Correction is required.

Applicants must provide the description of the peduncles' length, diameter, strength, texture, and

color. Correction is required.

K. Applicants must provide the description of the reproduction organs, and indicate whether they are

present on disc or ray florets, or both. Correction is required.

L. The age of the plant observed for the detailed botanical description should be disclosed.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the

botanical descriptions set forth in the specification to ensure completeness and accuracy and to

distinguish the plant within this expanding market class. Any further botanical information should be

imported into the specification, as should any additional or corrected information relative to same.

Claim Rejection

35 USC § 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a

clear and complete botanical description of the plant for reasons set forth in the Objection to the

Disclosure Section above.

This is a continuation of applicant's earlier Application No10/152,807. All claims are drawn to the

same invention claimed in the earlier application and could have been finally rejected on the grounds and

art of record in the next Office action if they had been entered in the earlier application. Accordingly,

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THIS ACTION IS MADE FINAL even though it is a first action in this case. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from

the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date

of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no, however, event will the statutory period for reply expire later than SIX

MONTHS from the mailing date of this final action.

**Future Correspondence** 

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Annette H. Para whose telephone number is (571) 272-0982. The Examiner can normally

be reached Monday through Thursday from 5:30 am to 4:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor,

Bruce Campell, can be reached on (571) 272-0994. The fax numbers for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix

Customer Service Center whose telephone number is (703) 872-9305.

A.H.P

BRUCE R. CAMPELL, PH.D SUPERVISORY PATENT EXAMINER

Bru Campell

TECHNOLOGY CENTER 1600